IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

Con.Case(C).No. 46 of 2007(S)

AGAINST THE JUDGEMENT IN WA.2641/2005 DATED 23.3.2006

PETITIONER: APPELLANT:

MARY MATHEW, W/O.LATE SRI.K.O.MATHEW,
KANIYAMKUDIYIL HOUSE, VALAYANCHIRANGARA P.O.,
PERUMBAVOOR, ERNAKULAM DISTRICT.

BY ADV. SRI.M.C.CHERIAN

RESPONDENT: 1ST RESPONDENT:

GOPINATHAN, AGED 53,
S/O.P.T.BALAKRISHNAN NAIR, EXECUTIVE ENGINEER,
PAZHASSI IRRIGATION PROJECT DIVISION NO.II,
DEPARTMENT OF WATER RESOURCES,
KANNUR DISTRICT, KERALA.

BY SENIOR GOVERNMENT PLEADER SRI.M.R.SABU

THIS CONTEMPT OF COURT CASE (CIVIL) HAVING BEEN FINALLY HEARD ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

Cont. Case (C). NO. 46 OF 2007 S

Dated this the 29th June, 2007

JUDGMENT

H.L.DATTU, C.J.

Appellant in W.A.No.2641 of 2005 is the complainant in this contempt petition. She alleges that the respondent in the contempt petition has disobeyed, wilfully and deliberately, the orders and directions issued by this Court while disposing of the writ appeal. Therefore, she is before us in this contempt petition with a request to initiate contempt proceedings against the respondent in exercise of its powers under Article 215 of the Constitution read with Sections 11 and 12 of the Contempt of Courts Act.

2. Respondent has entered appearance through the learned counsel. He has filed a detailed counter and also a memo of calculation.

3. This Court while disposing of W.A.No.2641 of 2005 on 23rd March, 2006, had only observed as under:

> "In the circumstances as mentioned above, we set aside the order Ext.P5 and direct the respondents to work out the price of the materials obtainable in 1997 when the husband of the petitioner completed the job assigned to

him and handed over possession. Let the price of the materials in the manner indicated above be worked out and retained by the department whereas the remaining amount due to the petitioner for the works carried out by the husband of the petitioner be made over to her within two months from today."

4. Respondent has filed a detailed counter. In the counter it is stated that in addition to price of materials obtainable in 1997, they have calculated penal recovery of unreturned materials as on 1997 also. The said paragraph is relevant for the purpose of the disposal of this contempt petition. Therefore, the same is extracted. It is as under:

"6. **Penal Recovery of Un-returned materials as on 1997**: As per the judgment in WA.2641/2005 filed by the petitioner, price of materials was worked out obtainable in 1997. A true copy of rates is produced herewith and marked as **Annexure – II**. Penal recovery was imposed as per agreement condition. A true copy of agreement condition is produced herewith and marked as **Annexure- III**.

Cement:	
Cement 61.95 MT @ Rs.3650/MT	Rs.226118.00
20% Surcharge	Rs. 45224.00
1% Storage	Rs. 2261.00
12.5% ST	Rs. 28265.00
	Rs.301868.00
Deducted Cost of 61.95 MT Cement Recovered from previous bills and Last bill @ 1900/MT(As per agreement)	Rs.(-)117705.00
Balance	Rs.184163.00

Steel:

25.447 MT Steel @ Rs.17150/MT	Rs.436414.00
20% Surcharge	Rs. 87283.00
1% Storage	Rs. 4364.00
12.5% ST	Rs. 54552.00
	Rs. 582615.00
Deducted Cost of 25.447 MT Steel Recovered from previous bills and last bills @ Rs.12500/MT as per agreement.	Rs.(-)318088.00
Balance	Rs. 264527.00

Copper Sheet:

213.565 MT @ Rs.198.45/Kg.	Rs. 42382.00
20% Surcharge	Rs. 8476.00
1% Storage	Rs. 424.00
12.5% ST	Rs. 5298.00
	Rs. 56580.00
Total cost of un-returned materials is	Rs. 505270.00

In addition to the usual recoveries were calculated in a final bill settled such as cost of issued materials, Income Tax, Sales Tax, Kerala Workers Welfare Fund, Cost of EC bags, Short conveyance and hire charges etc. total comes to Rs.774074/-."

5. The one and the only direction that was issued by this Court while disposing of the writ appeal is to work out the price of the materials obtainable in 1997 when the husband of the petitioner completed the job assigned to him.

6. The respondent has worked out the bills and has supplied the same even to the petitioner's learned counsel. It is the allegation of the respondent that the complainant is still owes some money to the respondent.

7. Having seen the assertions and allegations made in the contempt petition, the orders passed by this Court and the counter affidavit filed by the respondent, we are of the firm opinion that the respondent has substantially complied with the orders and directions issued by this Court.

8. In a case of this nature, we are of the opinion that cognizance of the contempt petition filed by the complainant need not be taken by us. Accordingly, the contempt proceedings requires to be dropped and it is dropped.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/

H.L.DATTU, C.J. &
K.T.SANKARAN, J.

Con.Case(C)NO.46/2007

JUDGMENT

29th June, 2007